

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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|--|---|----------------------------|
| ALVIN J. WOLFF, MANAGEMENT | | No. 27183-8-III |
| COMPANY, a Washington corporation, |) | |
| as agent for ARGONNE COMMERCIAL |) | |
| CENTER, |) | Division Three |
| |) | |
| Respondents, |) | |
| |) | UNPUBLISHED OPINION |
| v. |) | |
| |) | |
| DOUG BARTLETT, d/b/a BARTLETT, |) | |
| LLC, a Washington limited liability |) | |
| company, |) | |
| |) | |
| Appellant. |) | |
| |) | |

Brown, J.—Doug Bartlett, doing business as Bartlett, LLC, appeals the trial court’s decision finding he unlawfully detained premises leased from Alvin J. Wolff Management Company (Wolff Management). Mr. Bartlett contends the trial court erred in interpreting the lease to require him to pay his share of a communal dumpster as additional rent and part of his common area maintenance (CAM) charges. We disagree, and affirm the judgment including double damages for rent withheld.

FACTS

Mr. Bartlett entered into leases for two units, located on Montgomery Avenue in Spokane Valley, with Wolff Management, serving as an agent for the landlord, Argonne Commercial Center. Both leases included the following paragraphs:

13. **Utilities:** Tenant hereby covenants and agrees to pay all charges for heat, refuse, **and lights** for all other public utilities which shall be used in or charged against the leased premises during the full term of this lease. Landlord shall not be liable for the failure of any such services for any reason whatsoever. In the event the leased premises are a part of a building or larger premises to which such charges are charged as a whole, with the consent of the landlord, the tenant agrees to pay, upon demand, a proper and fair share of said charges as determined by the percentage of building space in the demised premises as compared with the total building space included in said charge.

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64. **Operating Expenses:** Tenant shall pay as additional rent Tenant's pro rata share of Operating Expenses within 30 days of receiving an invoice. Landlord may send Tenant an invoice to prepay monthly one-twelfth of the Budgeted Annual Operating Expenses, which, after year end, a reconciliation will occur to reimburse any Operating Expense overpayment or bill for any Operating Expense underpayment. "Operating Expenses" shall mean and include those expenses paid or incurred by Landlord for maintaining, operating and repairing the building(s), including the cost of all utilities, **water, sewer**, supplies, insurance, cost of service by independent contractors, the cost of compensation (including employment taxes, similar governmental charges and fringe benefits) of all persons who perform duties in connection with the operation, maintenance and repair of the building(s), its equipment, the land upon which it is situated, the common areas and automobile parking areas, customary management fees, legal and accounting expenses and any other expense or charge related to the building(s), and all real property taxes and personal property taxes, and charges or assessments levied or assessed upon or with respect to the building(s),

land upon which it is situated, or any other improvements, fixtures and equipment. Tenant agrees to contract with Waste Management Spokane for their own garbage disposal.

Clerk's Papers (CP) at 8 (emphasis in original).

Initially, Mr. Bartlett contracted for his own garbage removal. On September 26, 2006, Joe Organick, Vice President of Wolff Management, sent Mr. Bartlett a letter informing him that the fire code did not allow dumpsters that are 1.5 yards or larger inside the buildings, and asking him to contact Waste Management "to schedule the pick-up of your small dumpsters so that none of us are in violation." Pl.'s Ex. 2. The letter informed Mr. Bartlett a communal dumpster would be installed on the property, and "[t]he communal dumpster cost will be included in the common area charge you are currently paying." Pl.'s Ex. 2. On October 9, 2006, Mr. Organick sent Mr. Bartlett another letter, outlining changes in the location and size of the communal dumpster. The letter explained the fire code problems and reminded him to contact Waste Management "to schedule the pick-up of any remaining dumpsters." Pl.'s Ex. 3.

On January 10, 2008, Mr. Organick sent two letters to Mr. Bartlett, informing him that he owed an additional \$300.00 for one unit and \$720.00 for the other unit for the 2007 CAM charges, for a total of \$1,020.00 payable with the February rent. The letters did not outline what expenses made up these charges. The letters stated, "[u]nfortunately in 2007, higher real estate taxes and refuse costs have substantially increased our operating costs for this facility." Pl.'s Ex. 4, 5.

Mr. Bartlett did not pay the 2007 CAM charges. On February 11, 2008, Mr. Organick served Mr. Bartlett with a notice, for each unit, to either vacate the unit or pay the “delinquent rent owing,” for the 2007 CAM charges for each unit, within three days of the notices. The notices stated, “[t]he delinquent rent is for your pro-rata share of Operating Expenses for 2007, as set forth in the invoice provided to you on January 10, 2008 in accordance with Section 64 of your lease agreement.” CP at 36-37.

Wolff Management sued Mr. Bartlett for unlawful detainer when he did not comply, alleging Mr. Bartlett’s failure to pay the 2007 CAM charges as additional rent within 30 days of receiving invoices according to paragraph 64. Mr. Bartlett responded “the amounts claimed by [Wolff Management] as additional operating expenses are not chargeable to [Mr. Bartlett] under paragraph 64 of the [lease] because those amounts include charges for refuse removal, which is not an “operating expense” as defined in Paragraph 64.” CP at 41.

At the unlawful detainer hearing, Mr. Organick testified about the costs Wolff Management paid for the communal dumpster that resulted in additional operating costs for 2007 and the letters he sent Mr. Bartlett explaining the CAM charges. One letter included a spreadsheet of the 2004 to 2007 operating costs showing cost increases. Mr. Organick explained the increased costs, “primarily it was real estate taxes; it was real estate taxes and refuse were the big drivers that caused our costs to go up.” Report of Proceedings (RP) (Mar. 28, 2008) at 19. Mr. Organick told Mr.

Bartlett about one-half of the 2007 CAM charges were due to the communal dumpster charges.

Mr. Bartlett testified about his efforts to secure and pay for his own smaller dumpster, which was stored inside his shop. Regarding the 2007 CAM charges, Mr. Bartlett testified, “I think I heard [Mr. Organick] say a thousand-twenty of it was related towards garbage.” RP (Mar. 28, 2008) at 56. He admitted he had seen the letter from Mr. Organick which included a spreadsheet of the operating costs from 2004 to 2007. Mr. Bartlett acknowledged the spreadsheet included an increase in real estate taxes from 2006 to 2007 that would be a legitimate CAM expense.

The spreadsheet, an exhibit, showed increases from 2006 to 2007 for the following expenses: miscellaneous administrative expenses, property insurance, electricity, water, refuse, fire protection, exterminating, grounds contract, snow removal, electrical repairs and supplies, parking lot maintenance, and real estate taxes. The spreadsheet did not outline how much of the \$1,020.00 Mr. Bartlett owed for the 2007 CAM charges attributed to the communal dumpster.

The trial court found Mr. Bartlett guilty of unlawful detainer; terminated the leases; ordered him to restore possession of the units to Wolff Management; and awarded Wolff Management \$902.40 for rent due after an adjustment for a 2006 CAM overpayment, plus an additional \$902.40 for double damages pursuant to RCW 59.12.170. In addition, the trial court awarded attorney fees and costs to Wolff

Management. The trial court found that in looking at the spreadsheet of increased operating costs from 2004 to 2007, particularly taxes and refuse, “it is clear there are some monies owed . . . for the common expenses, if you will, under Paragraph 64 of the operating expenses.” RP (Mar. 28, 2008) at 68.

The court found money owed under two theories. First, “[t]he taxes are clearly owed.” RP (Mar. 28, 2008) at 70. Second, the court found “it was a clear attempt to resolve the refuse; could have been objected to; it was not. It then becomes owed as a direct reimbursement.” RP (Mar. 28, 2008) at 70. The court orally reasoned:

[E]ven if [refuse] is not included in those paragraphs [of the lease], it appears to me that the tenant at that point would have to take a positive step to say, that’s not right, exempt me out. But by sitting back for a year and a half, even without a billing, I don’t think they can then say, well, I have been doing it on my own all this time, and now I want out of this deal.

RP (Mar. 28, 2008) at 70. The court found taxes were an operating expense under paragraph 64. The court also found refuse was an operating expense under paragraph 64, stating, “I . . . have held at the very least there is a waiver of . . . [Mr. Bartlett’s] claim that the garbage was not included.” RP (Mar. 28, 2008) at 72.

Mr. Bartlett unsuccessfully moved for reconsideration. Mr. Bartlett appealed.

ANALYSIS

A. Unlawful Detainer

The issue is whether the trial court erred in finding Mr. Bartlett guilty of unlawful detainer. Mr. Bartlett contends the cost of the communal dumpster is not an operating

expense chargeable to him as additional rent under lease paragraph 64, and thus, is not subject to double damages under RCW 59.12.170.

“An unlawful detainer action under chapter 59.12 RCW is a summary proceeding designed primarily to facilitate recovery of possession of real property and incidentally related issues such as rent.” *MH2 Co. v. Sun Hwang*, 104 Wn. App. 680, 684, 16 P.3d 1272 (2001) (citing *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985)).

Relevant here, a tenant unlawfully detains property:

When he or she continues in possession . . . after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, . . . [and the request] has remained uncomplied with for a period of three days after service thereof.

RCW 59.12.030(3). Further, “[t]he unlawful detainer statute is in derogation of common law, and must therefore be strictly construed in favor of the tenant.” *Hous. Auth. of City of Everett v. Terry*, 114 Wn.2d 558, 563, 789 P.2d 745 (1990) (citing *Wilson v. Daniels*, 31 Wn.2d 633, 643, 198 P.2d 496 (1948)).

“The interpretation of a lease is a question of law reviewed de novo.” *Duvall Highlands, L.L.C. v. Elwell*, 104 Wn. App. 763, 771 n.18, 19 P.3d 1051 (2001) (citing *Carlstrom v. Hanline*, 98 Wn. App. 780, 784, 990 P.2d 986 (2000)). The rules of construction applicable to contracts apply to leases. *Seattle-First Nat’l Bank v. Westlake Park Assocs.*, 42 Wn. App. 269, 272, 711 P.2d 361 (1985). “The goal of contract interpretation is to carry out the intent of the parties as manifested, if possible,

by the parties' own contract language." *Dep't of Corr. v. Fluor Daniel, Inc.*, 160 Wn.2d 786, 795, 161 P.3d 372 (2007) (citing *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005)). Washington follows the objective theory of contracts, under which "we attempt to determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties." *Hearst Commc'ns*, 154 Wn.2d at 503. Further, words in a contract are given "their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent." *Id.* at 504.

Paragraph 64 provides, "Tenant shall pay as additional rent Tenant's pro rata share of Operating Expenses within 30 days of receiving an invoice." CP at 11. Paragraph 64 defines "operating expenses" as including the cost of "all utilities" and provides: "Tenant agrees to contract with Waste Management Spokane for their own garbage disposal." CP at 11, 25.

Considering paragraphs 13 and 64 together, garbage removal is an operating expense. Paragraph 13 defines utilities to include refuse, and therefore, refuse is a utility, and utilities are classified as operating expenses under paragraph 64. Thus, the trial court did not err in classifying the cost of a communal dumpster as an operating expense under paragraph 64.

Moreover, the 2007 CAM charges included undisputed additional costs beyond the communal dumpster. As stated above, paragraph 64 provides that "Tenant shall

pay as additional rent Tenant's pro rata share of Operating Expenses within 30 days of receiving an invoice." CP at 11. Therefore, the trial court properly found Mr. Bartlett unlawfully detained the property, because he continued in possession of the property, after the required notice, without paying the operating expenses, which were classified in the leases as rent. See RCW 59.12.030(3).¹

Mr. Bartlett next contends the trial court erred in awarding double damages for the amount of rent found due pursuant to RCW 59.12.170. Specifically, Mr. Bartlett argues the trial court erred in awarding double damages because the court never found that the cost of the communal dumpster came within the definition of operating expenses under the leases; and therefore, the court expressly declined to find the cost of the communal dumpster constituted rent under the leases. However, the trial court did find that it was an operating expense. And, Mr. Bartlett does not dispute the other operating expenses classified as additional rent.

B. Attorney Fees

Both parties request attorney fees and costs on appeal under lease paragraph 41, which provides in relevant part, "[i]n pursuing any of its remedies including the giving of notices of default the landlord shall be entitled to recover from the tenant all of its costs and expenses incurred, including reasonable attorney fees, through and

¹ Mr. Bartlett argues his failure to pay 2007 CAM charges unrelated to the communal dumpster should not be considered, because it is raised for the first time on appeal. But the trial court did consider and require payment for the other 2007 CAM charges.

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including appeal.” CP at 10, 24. Under RCW 4.84.330, if a lease provides for an award of attorney fees and costs to one party, “the prevailing party, whether he is the party specified in the . . . lease or not, shall be entitled to reasonable attorney’s fees in addition to costs and necessary disbursements.” “Prevailing party” is defined as “the party in whose favor final judgment is rendered.” RCW 4.84.330. Here, Wolff Management has prevailed, and therefore, we grant their request for attorney fees and costs.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the

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Washington Appellate Reports, but it will be filed for public record pursuant to RCW
2.06.040.

Brown, J.

WE CONCUR:

Sweeney, J.

Korsmo, J.